

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CLIFF LEE, an individual,	:	CIVIL ACTION
and LEE GALLERY, Inc.	:	
	:	
v.	:	
	:	
A.R.T. STUDIO CLAY	:	
COMPANY, INC.,	:	
CERAMIC SUPPLY OF NEW	:	
YORK & NEW JERSEY, INC.,	:	
and DOES 1 THROUGH 50,	:	
INCLUSIVE	:	NO. 01-0119

**MEMORANDUM AND ORDER**

HUTTON, J.

May 10, 2001

Presently before this Court is the Joint Rule 26(f) Report and Discovery Plan and proposed Stipulation By All Parties for Protective Order and Order (Docket No. 22). For the following reasons, the request for Protective Order is **DENIED**.

**BACKGROUND**

On April 30, 2001, the parties in the above captioned matter filed a Joint Rule 26(f) Report and Discovery Plan. Attached to this Plan was a stipulation by all parties for protective order. The Court now evaluates the proposed protective order.

**DISCUSSION**

The Supreme Court in *Seattle Times Co. v. Rhinehart*, held that there is "no question as to the court's jurisdiction to [enter

protective orders] under the inherent 'equitable powers of courts of law over their own process, to prevent abuses, oppression, and injustices.'" 467 U.S. 20, 35 (1984). The power to grant confidentiality orders, however, is not unlimited, and the Third Circuit has written that such orders should not be granted arbitrarily. *Pansy v. Borough of Stroudsburg*, 23 F.3d 772 (3d Cir. 1994). Specifically, the Third Circuit directed that "whether an order of confidentiality is granted at the discovery stage or any other stage of litigation, including settlement, good cause must be shown to justify the order." *Pansy*, 23 F.3d at 786. The *Pansy* opinion requires district courts to clearly articulate the good cause justifying that the subject discovery be protected, *id.* at 786, and that the district court's analysis reflect a balancing of private and public interests. *Id.* Specifically, the court wrote:

Discretion should be left with the court to evaluate the competing considerations in light of the facts of individual cases. By focusing on the particular circumstances in the cases before them, courts are in the best position to prevent both the overly broad use of [protective] orders and the unnecessary denial of confidentiality for information that deserves it.

*Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir. 1995)(quoting Arthur R. Miller, "Confidentiality, Protective Orders, and Public Access to the Courts," 105 Harv.L.Rev. 427, 492 (1991)).

The *Pansy* court articulated several factors, which are neither mandatory nor exhaustive, to be considered by a district court when

determining whether "good cause" exists. *Damiano v. Sony Music Entm't*, Civ.A 95-4795, 2000 WL 1689081, \*9 (D. N.J. Nov. 13, 2001).

Those factors include:

- i. whether disclosure would violate the privacy interests of the party seeking protection;
- ii. whether the information is being sought for a legitimate purpose;
- iii. whether disclosure of the information will cause a party embarrassment;
- iv. whether confidentiality is being sought over information important to public health and safety;
- v. whether the sharing of information among litigants will promote fairness and efficiency;
- vi. whether a party benefitting from the order of confidentiality is a public entity or official; and
- vii. whether the case involves issues important to the public.

*Pansy*, 23 F.3d at 787-89; *Glenmede*, 56 F.3d at 483.

The Third Circuit has instructed District courts not to rely on the general interest in encouraging settlement and should require a particularized showing of the need for confidentiality in reaching settlement. See *Pansy*, 23 F.3d at 788.

Here, the proposed order seeks to "designate as confidential only such documents as contain personal or business sensitive information." See Proposed Protective Order, at 2. The proposed order indicates that "sensitive documents include but are not limited to medical records, income tax returns, and other confidential business records." See *id.* at 6. Having failed to make a particularized showing of the need for confidentiality, the Court is not in a position to determine whether good cause exists

for the proposed protective order. The request for protective order is denied.

An appropriate Order follows.

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O R D E R

AND NOW, this 10<sup>th</sup> day of May, 2001, upon consideration of the Joint Rule 26(f) Report and Discovery Plan and proposed Stipulation By All Parties for Protective Order and Order (Docket No. 22), IT IS HEREBY ORDERED that the request for protective order is **DENIED**.

BY THE COURT:

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HERBERT J. HUTTON, J.